

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

CRIMINAL ACTION

v.

WARREN NICHOLS

NO. 15-85 -01

DuBois, J.

May 5, 2015

MEMORANDUM

I. INTRODUCTION

On March 3, 2015, a grand jury in the Eastern District of Pennsylvania returned a three-count Indictment against defendant Warren Nichols, in which he was charged as follows:

- Count I: Conspiracy to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 846;
- Count II: Possession with intent to distribute 500 grams or more of cocaine and aiding and abetting possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) and 18 U.S.C. § 2; and
- Count III: Possession of marijuana, in violation of 21 U.S.C. § 844.

At an initial appearance hearing on February 5, 2015 before Magistrate Judge Jacob Hart, defendant stipulated to detention. Subsequently, he filed a Motion for Pretrial Release. The Court conducted an evidentiary hearing and heard oral argument on defendant's Motion on April 22, 2015. At the conclusion of the hearing, the Court denied defendant's Motion for Pretrial Release and stated its reasons for the denial. This Memorandum amplifies the bases for the Court's ruling.

II. LEGAL STANDARD

18 U.S.C. § 3142(e)(1) provides that a judicial officer shall order a defendant's detention pending trial "[i]f, after a hearing . . . , the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." The Government has the burden of persuading the Court by a preponderance of the evidence that the defendant poses a risk of flight if released pending trial or by clear and convincing evidence that the defendant is a danger to the community.

United States v. Himler, 797 F.2d 156, 160–61 (3d Cir. 1986).

In cases where there is probable cause to believe that a defendant committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801 *et seq.*), the Court presumes that "no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community." 18 U.S.C. § 3142(e)(3)(A). To rebut the presumption of detention, the defendant "must produce *some credible evidence* forming a basis for his contention that he will appear and will not pose a threat to the community." *United States v. Carbone*, 793 F.2d 559, 560 (3d Cir. 1986) (emphasis added). The presumption shifts to the defendant only the burden of producing evidence that the defendant is neither a danger nor a flight risk; the burden of persuading the Court that the defendant is dangerous or will not appear for trial remains with the Government. *United States v. Suppa*, 799 F.2d 115, 119 (3d Cir. 1986).

III. FINDINGS OF FACT

Having reviewed the submissions of the parties and conducted a hearing on April 22, 2015, the Court makes the following findings of fact:

1. On the evening of February 3, 2015, an officer with Customs and Border Protections (“CBP”) contacted Special Agent Brian Leigh of the Department of Homeland Security, Homeland Security Investigations (“HSI”) in Philadelphia, regarding an airplane suspected of being involved in the smuggling of narcotics across the country. The aircraft was a Beech Bonanza registered to Kid Power Sports, LLC, a company with which defendant was associated. CBP officials informed Special Agent Leigh that the plane was in route from the West Coast and they anticipated that it would land at Wings Airfield in Blue Bell, Pennsylvania.

2. At approximately 2:00 a.m. on February 4, 2015, members of HSI, including Special Agent Leigh, and local law enforcement observed the Beech Bonanza aircraft in question land at Wings Airfield. Defendant and another man, later identified as Raul Rosales, exited the plane carrying duffle bags and a backpack. They then left the airfield and began walking down Narcissa Road.

3. Whitepain Township Police officers approached and stopped defendant and Rosales as they exited the airfield. A search of the duffle bags and backpack they were carrying revealed approximately four kilos of cocaine and a bag of marijuana.

4. Defendant is the owner of the Beech Bonanza aircraft in question, which he purchased in October 2014 for \$50,000 in cash. He then took flight lessons to become certified to operate the plane.

5. Defendant resided with his wife, Shetorra Nichols, in Lansdale, Pennsylvania from 2004 until 2011. He and Mrs. Nichols separated in 2011; defendant has not maintained a Philadelphia residence since that time. Defendant’s mother and sister both reside in the Philadelphia area.

6. Defendant was last employed by Olney Business Center, 430 West Olney Avenue, Philadelphia, Pennsylvania, from January 2012 until May 2012. Prior to that, he was employed by Keller Williams Real Estate in Blue Bell, Pennsylvania from January 2006 to January 2008.

7. Defendant did not file tax returns between 2010 and 2013. However, in 2013 and 2014, defendant maintained bank accounts at Citibank and J.P. Morgan Chase. During this period, on numerous occasions, thousands of dollars were deposited into defendant's accounts in Pennsylvania and New Jersey and withdrawn shortly thereafter in California. These deposits totaled approximately \$75,000 in a nine-month period.

8. Defendant's November 2014 J.P. Morgan Chase bank account statement lists his address as 900 South Figueroa Street, Los Angeles, California. The debit card associated with defendant's Citibank account was used to purchase multiple items in California in 2013. Defendant also purchased several commercial airline tickets to travel between Philadelphia and Los Angeles in 2013 and 2014.

9. In April 2014, defendant was convicted in the Philadelphia Court of Common Pleas of a felony firearms offense (carrying a firearm without a license), related misdemeanor and summary firearms offenses (carrying a firearm in public in Philadelphia and carrying a loaded weapon), and possession of a controlled substance. Bail was set in the matter at \$50,000/10%, which defendant posted. Defendant is scheduled for sentencing in this matter on May 6, 2015.

10. Defendant was arrested, charged, and indicted in the present matter while he was on bail in the matter before the Philadelphia Court of Common Pleas.

11. Defendant tested positive for marijuana as a result of a drug screen conducted on February 5, 2015 by Pretrial Services.

IV. CONCLUSIONS OF LAW

The Bail Reform Act, 18 U.S.C. § 3141 *et seq.*, provides for pretrial detention only where a defendant poses a risk of flight or a danger to the community. The Act provides that where “there is probable cause to believe that [a defendant] committed ... an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801 *et seq.*),” “[s]ubject to rebuttal by the [defendant], it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community.” 18 U.S.C. § 3142(e)(3)(A).

Defendant was indicted on three counts, two of which have a maximum term of 40 years imprisonment. *See* 21 U.S.C. § 841(b)(1)(B); *id.* § 846. Thus, the rebuttable presumption of 18 U.S.C. § 3142(e)(3)(A) applies so long as the Court finds probable cause to believe that defendant committed the offense with which he is charged.

An indictment is “sufficient to support a finding of probable cause triggering the rebuttable presumption ... under § 3142(e).” *Suppa*, 799 F.2d at 119. Based on the indictment and the Court’s factual findings stated above, the Court concludes that there is probable cause to believe that defendant committed the offenses for which he is charged in the indictment, and thus the presumption applies.

To rebut the presumption of detention, the defendant “must produce some credible evidence forming a basis for his contention that he will appear and will not pose a threat to the community.” *Carbone*, 793 F.2d at 560. In this case, the Court concludes that defendant has rebutted the § 3142(e) presumption by producing some credible evidence — in particular, the

fact that his mother and sister reside in the Philadelphia area — that he will appear for trial and will not pose a danger to the community.

The Court concludes, however, that the Government has proven by clear and convincing evidence that defendant poses a danger to the community. The Court notes in particular that defendant allegedly committed the charged offenses in the present matter when he was on bail following his conviction in the Philadelphia Court of Common Pleas for firearms offenses and possession of controlled substances. The fact that defendant was arrested while on bail and awaiting sentencing in a separate matter demonstrates that defendant is unlikely to respect the terms of bail and will continue to pose a danger to the community if released. Second, the Government's evidence in this case is strong: the Government recovered four kilos of cocaine and a bag of marijuana upon a search of the duffle bag and backpack that defendant and the co-defendant, Rosales, were carrying as they exited Wings Airfield; the Government identified the plane at issue as belonging to defendant; the Government identified multiple large cash deposits and withdrawals to and from bank accounts belonging to defendant, between 2013 and 2014; and there is no evidence of a lawful source of such income or the \$50,000 defendant used to purchase the aircraft. Finally, defendant has a recent history of drug use, having tested positive for marijuana during a drug screen in February 2015. This evidence demonstrates that there is a real risk that defendant will engage in illicit conduct if released pending trial and thus poses an ongoing danger to the community.

Furthermore, the Court concludes that the Government has proven by a preponderance of the evidence that defendant poses a risk of flight if released pending trial. First, defendant has limited ties to the Philadelphia area. Although his mother and sister reside in the area, defendant does not have a Philadelphia residence and is estranged from his wife, with whom he previously

resided in Lansdale, Pennsylvania. Defendant is not employed in the Philadelphia area, nor does he have a recent history of gainful employment. Second, defendant has strong ties to California: for example, his Citibank account lists a California address as his mailing address and he traveled to California frequently in 2013 and 2014, including while he was on bail in the matter before the Philadelphia Court of Common Pleas. Finally, defendant is a trained pilot with a history of access to significant sums of cash, as evidenced by the \$50,000 he used to purchase the Beech Bonanza and the thousands of dollars deposited and withdrawn from his accounts with Citibank and J.P. Morgan Chase in 2013 and 2014. Given defendant's limited ties to the Philadelphia area, his connections to California, his flight training, and his history of accessing large sums of cash, the Court determines that defendant would pose a flight risk if released pending trial.

V. CONCLUSION

The Court concludes that the Government has proven by clear and convincing evidence that defendant poses a danger to the community. The Court also concludes that the Government has proven by a preponderance of the evidence that defendant poses a risk of flight. Accordingly, defendant's Motion for Pretrial Release is denied.

An appropriate order follows.

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ORDER

AND NOW, this 5th day of May, 2015, upon consideration of Defendant, Warren Nichols' Motion for Pretrial Release (Document No. 10, filed April 1, 2015), and Government's Response to Defendant's Motion for Bond (Document No. 13, filed April 7, 2015), the Court having conducted an evidentiary hearing and heard oral argument on April 22, 2015, for the reasons set forth in the accompanying Memorandum dated May 5, 2015, **IT IS ORDERED** that Defendant, Warren Nichols' Motion for Pretrial Release is **DENIED**.

IT IS FURTHER ORDERED that:

1. Defendant is committed to the custody of the Attorney General for confinement in a correction facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
2. Defendant be afforded reasonable opportunity for private consultation with counsel; and
3. On order of a court of the United States, or on request of an attorney for the government, the person in charge of the corrections facility in which defendant is confined shall deliver defendant to a United States Marshall for the purpose of an appearance in connection with court proceedings.

BY THE COURT:

/s/ Hon. Jan E. DuBois _____
DuBOIS, JAN E., J.